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**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309(j)  
of the Communications Act  
— Competitive Bidding for  
Commercial Broadcast and  
Instructional Television Fixed  
Service Licenses )

MM Docket No. 97-234

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings )

GC Docket No. 92-52

Proposals to Reform the  
Commission's Comparative  
Hearing Process to Expedite  
the Resolution of Cases )

GEN Docket No. 90-264

To: The Commission

**REPLY COMMENTS OF THE UNIVERSITY OF NORTH CAROLINA**

The University of North Carolina (UNC) on behalf of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, North Carolina State University at Raleigh, Pembroke State University, University of North Carolina at Asheville, University of North Carolina at Chapel Hill, University of North Carolina at Charlotte, University of North Carolina at Greensboro, University of North Carolina at Wilmington, Winston-Salem State University and West Carolina University (the Universities), the University of North Carolina General Administration (General Administration) and the University of

North Carolina Center for Public Television (the Center), through their attorneys and pursuant to Section 1.415 of the rules, hereby files Reply Comments in the above-referenced proceeding concerning, inter alia, possible auctions for ITFS applicants. In support thereof, the following is shown:

1. UNC is the state educational institution established to provide a broad array of educational services to the citizens of North Carolina. Through the Universities, which comprise the constituent institutions of UNC, and its adjunct agencies, General Administration and the Center, UNC has proposed a statewide ITFS system which will provide ITFS services throughout North Carolina. Toward this end, the Universities, General Administration and the Center in October 1995 filed over sixty applications proposing a comprehensive statewide ITFS service. In addition, UNC has entered into an excess capacity leasing arrangement with Wireless One of North Carolina, Inc. (WONC) which provides for the full implementation of this unique statewide system. UNC in cooperation with WONC has been a party to negotiations with mutually exclusive ITFS applicants throughout North Carolina. These efforts, which have included settlements and other technical solutions, have resulted in resolutions which will enable the Commission to grant numerous applications in the State and facilitate the early implementation of statewide ITFS service.

2. UNC participated in the comment phase of this proceeding, strenuously opposing the use of auctions to award ITFS authorizations.<sup>1</sup> UNC has reviewed the comments of other parties in this proceeding. With one exception, the commenters

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<sup>1</sup>See Joint Comments of Schwartz, Woods & Miller filed on January 26, 1998.

voiced unqualified opposition to the use of auctions in the ITFS service on statutory and public policy grounds. As a general matter, the comments in opposition to auctions observe that: 1) that rationale for not including noncommercial educational broadcast facilities in auctions applies with equal validity to ITFS; 2) the comparative processing and related settlement procedures currently applicable to mutually exclusive ITFS applications are an efficient, effective and expeditious means of issuing ITFS authorizations consistent with the Commission's well-settled determination to promote ITFS as a local service<sup>2</sup>; and 3) substitution of auction procedures for the current system is grossly unfair to ITFS parties which have invested enormous time and expense in pursuing ITFS service through mutually beneficial arrangements with wireless cable entities and will delay rather than expedite ITFS service to the public.<sup>3</sup> UNC entirely agrees with these views.

3. UNC specifically desires to stress that there is no statutory mandate compelling the use of auctions in the ITFS service; indeed, the Balanced Budget Act of 1997 (the Budget Act) precludes their use for ITFS applications. UNC in this regard directs the Commission's attention to the comments of APTS and WCA. As APTS aptly observes (APTS Comments, pp. 16-17), Sections 73.621 and 74.932 of the rules governing eligibility for noncommercial educational broadcast and ITFS stations are fundamentally equivalent. For this reason, the Budget Act's exclusion from auctions of

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<sup>2</sup>See, e.g., Second Report and Order, MM Docket 83-523, 101 FCC 2d 50 (1985).

<sup>3</sup>See, e.g., Comments of the Association of America's Public Television Stations (APTS), Wireless Cable Association International, Inc. (WCA), the Corporation for Public Broadcasting and Joint Comments of College of the Albemarle et al.

facilities licensed to stations in Section 397(6) of the Communications Act applies equally to ITFS applicants. Further, as WCA notes, (WCA Comments, pp. 17-18), the Budget Act's termination of the Commission's lottery authority in no way mandates use of auctions in the ITFS inasmuch as this service has its own unique (and effective) comparative point system for selecting among mutually exclusive applicants. The existence of this point system makes the use of auctions for ITFS applications pending since October 1995 (or earlier) especially inapposite, not to mention unfair and inconsistent with the Commission's treatment of certain similarly situated applicants in other services. See WCA Comments, pp. 14-17. In sum, the conclusions of APTS, WCA and others in this proceeding are entirely consistent with UNC's own view that Congress never intended to apply auctions to ITFS and that the Commission has a mandate not to use them.

4. Predictably enough, the only commenter supporting ITFS auctions is the Hispanic Information and Telecommunications Network (HITN). There is utterly no basis to HITN's bald assertions (HITN Comments, pp. 4-6) either that the Budget Act clearly mandates ITFS auctions or that Congress intended such a result. Indeed, a fair reading of the Budget Act's exclusion of Section 397(6) facilities and a legislative history characterized by complete Congressional silence on the subject of ITFS compels a contrary conclusion. Further, the policy considerations raised by HITN (Comments, pp. 6-7) which purportedly support use of auctions in ITFS — expedited service, efficient use of spectrum and avoidance of judicial or administrative delay — are wholly inapposite where, as here, a valid and easily administered comparative selection process which promotes local ITFS service has been established. HITN's true motive

for supporting auctions — pure pecuniary gain — is evinced in its proposal for a six-month settlement window comparable to the procedure recently concluded in the case of mutually exclusive commercial broadcast applications. While that procedure may have been entirely appropriate for commercial application conflicts, particularly in light of the lack of valid comparative procedures and the commercial character of both the applicants and their proposed service, it is entirely inappropriate for ITFS, which has an established comparative procedure that properly favors local noncommercial educational service, consistent with the ITFS frequency allocation. The Commission must not predicate a decision to use auctions in ITFS on the narrow and purely private objectives of a single party such as HITN.

5. While UNC does not believe that ITFS auctions are either mandated or authorized by the Budget Act, in the event that the Commission reaches a contrary conclusion, it is essential that any competitive bidding procedures be carefully crafted to preserve the local character of ITFS service and the special needs of ITFS applicants. In this regard, UNC supports WCA's positions (Comments, pp. 18-29) that any auction system minimize occurrences of mutual exclusivity;<sup>4</sup> 2) employ a sequential bidding format; 3) regulate auctions of subsequently filed applications by using a window filing system; 4) exempt modification applications; and 5) award bidding credits which are consistent with the comparative criteria currently used to select from among mutually exclusive ITFS applicants.

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<sup>4</sup>For this reason, auctions based on geographic licensing should not be employed.

WHEREFORE, for the foregoing reasons, UNC respectfully urges the Commission not to apply auction procedures to ITFS or, in the event that it does so, to conduct them in a manner consistent with the views expressed herein.

Respectfully submitted,

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